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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**MICHAEL ZELNY, an individual,**

Plaintiff,

**v.**

**EDMUND G. BROWN, JR., an individual,  
in his official capacity; XAVIER  
BECERRA, an individual, in his official  
capacity; CITY OF MENLO PARK, a  
municipal corporation; and DAVE  
BERTINI, in his official capacity,**

Defendants.

CV 17-7357 JCS

**DEFENDANT ATTORNEY GENERAL  
XAVIER BECERRA'S ANSWER TO  
PLAINTIFF MICHAEL ZELNY'S  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Judge: The Honorable Richard G.  
Seeborg

Action Filed: December 28, 2017

Xavier Becerra, in his official capacity as Attorney General of the State of California, hereby responds to Plaintiff Michael Zeleny's Complaint for Declaratory and Injunctive Relief as follows:

# INTRODUCTION

1. In response to the allegations contained in paragraph 1 of the Complaint, Defendant Becerra denies the allegations.

2. In response to the allegations contained in paragraph 2 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

3. In response to the allegations contained in paragraph 3 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

4. In response to the allegations contained in paragraph 4 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

5. In response to the allegations contained in paragraph 5 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

6. In response to the allegations contained in paragraph 6 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

7. In response to the allegations contained in paragraph 7 of the Complaint, Defendant Becerra admits that Plaintiff Zeleny has asserted claims under 42 U.S.C. § 1983. Defendant Becerra denies that the California statutes Plaintiff Zeleny alleges were invoked or applied against him are unconstitutional. As to the remaining allegations, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.



15. In response to the allegations contained in paragraph 15 of the Complaint, Defendant Becerra denies committing any unlawful acts. Indeed, the Complaint lacks any allegations demonstrating any unlawful acts by Defendant Becerra. As to the remaining allegations, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

## THE PARTIES

16. In response to the allegations contained in paragraph 16 of the Complaint, Defendant Becerra admits the content of 28 U.S.C. § 1391(b). Defendant Becerra denies engaging in any acts which would give rise to Plaintiff Zeleny's action.

17. In response to the allegations contained in paragraph 17 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

18. In response to the allegations contained in paragraph 18 of the Complaint, Defendant Becerra admits that Edmund G. Brown Jr. has served as the Governor of the State of California since 2010. Defendant Becerra admits that Governor Brown is a resident of California, and a citizen of the United States.

19. In response to the allegations contained in paragraph 19 of the Complaint, Defendant Becerra admits he is the Attorney General of the State of California. Defendant Becerra admits that he is a resident of California, and a citizen of the United States.

20. In response to the allegations contained in paragraph 20 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

21. In response to the allegations contained in paragraph 21 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

22. In response to the allegations contained in paragraph 22 of the Complaint, Defendant Becerra denies the unlawful acts and omissions alleged in the Complaint, but admits that he acted lawfully under color of state law. As to the remaining allegations, Defendant Becerra lacks

1 knowledge or information sufficient to form a belief as to the truth of the allegations and,  
2 therefore, denies the allegations therein.

3 **FACTS**

4 23. In response to the allegations contained in paragraph 23 of the Complaint, Defendant  
5 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
6 allegations and, therefore, denies the allegations therein.

7 24. In response to the allegations contained in paragraph 24 of the Complaint, Defendant  
8 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
9 allegations and, therefore, denies the allegations therein.

10 25. In response to the allegations contained in paragraph 25 of the Complaint, Defendant  
11 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
12 allegations and, therefore, denies the allegations therein.

13 26. In response to the allegations contained in paragraph 26 of the Complaint, Defendant  
14 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
15 allegations and, therefore, denies the allegations therein.

16 27. In response to the allegations contained in paragraph 27 of the Complaint, Defendant  
17 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
18 allegations and, therefore, denies the allegations therein.

19 28. In response to the allegations contained in paragraph 28 of the Complaint, Defendant  
20 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
21 allegations and, therefore, denies the allegations therein.

22 29. In response to the allegations contained in paragraph 29 of the Complaint, Defendant  
23 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
24 allegations and, therefore, denies the allegations therein.

25 30. In response to the allegations contained in paragraph 30 of the Complaint, Defendant  
26 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
27 allegations and, therefore, denies the allegations therein.  
28

1           31. In response to the allegations contained in paragraph 31 of the Complaint, Defendant  
2       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
3       allegations and, therefore, denies the allegations therein.

4           32. In response to the allegations contained in paragraph 32 of the Complaint, Defendant  
5       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
6       allegations and, therefore, denies the allegations therein.

7           33. In response to the allegations contained in paragraph 33 of the Complaint, Defendant  
8       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
9       allegations and, therefore, denies the allegations therein.

10          34. In response to the allegations contained in paragraph 34 of the Complaint, Defendant  
11       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
12       allegations and, therefore, denies the allegations therein.

13          35. In response to the allegations contained in paragraph 35 of the Complaint, Defendant  
14       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
15       allegations and, therefore, denies the allegations therein.

16          36. In response to the allegations contained in paragraph 36 of the Complaint, Defendant  
17       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
18       allegations and, therefore, denies the allegations therein.

19          37. In response to the allegations contained in paragraph 37 of the Complaint, Defendant  
20       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
21       allegations and, therefore, denies the allegations therein.

22          38. In response to the allegations contained in paragraph 38 of the Complaint, Defendant  
23       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
24       allegations and, therefore, denies the allegations therein.

25          39. In response to the allegations contained in paragraph 39 of the Complaint, Defendant  
26       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
27       allegations and, therefore, denies the allegations therein.

1           40. In response to the allegations contained in paragraph 40 of the Complaint, Defendant  
2       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
3       allegations and, therefore, denies the allegations therein.

4           41. In response to the allegations contained in paragraph 41 of the Complaint, Defendant  
5       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
6       allegations and, therefore, denies the allegations therein.

7           42. In response to the allegations contained in paragraph 42 of the Complaint, Defendant  
8       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
9       allegations and, therefore, denies the allegations therein.

10          43. In response to the allegations contained in paragraph 43 of the Complaint, Defendant  
11       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
12       allegations and, therefore, denies the allegations therein.

13          44. In response to the allegations contained in paragraph 44 of the Complaint, Defendant  
14       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
15       allegations and, therefore, denies the allegations therein.

16          45. In response to the allegations contained in paragraph 45 of the Complaint, Defendant  
17       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
18       allegations and, therefore, denies the allegations therein.

19          46. In response to the allegations contained in paragraph 46 of the Complaint, Defendant  
20       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
21       allegations and, therefore, denies the allegations therein.

22          47. In response to the allegations contained in paragraph 47 of the Complaint, Defendant  
23       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
24       allegations and, therefore, denies the allegations therein.

25          48. In response to the allegations contained in paragraph 48 of the Complaint, Defendant  
26       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
27       allegations and, therefore, denies the allegations therein.

1           49. In response to the allegations contained in paragraph 49 of the Complaint, Defendant  
2       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
3       allegations and, therefore, denies the allegations therein.

4           50. In response to the allegations contained in paragraph 50 of the Complaint, Defendant  
5       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
6       allegations and, therefore, denies the allegations therein.

7           51. In response to the allegations contained in paragraph 51 of the Complaint, Defendant  
8       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
9       allegations and, therefore, denies the allegations therein.

10          52. In response to the allegations contained in paragraph 52 of the Complaint, Defendant  
11       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
12       allegations and, therefore, denies the allegations therein.

13          53. In response to the allegations contained in paragraph 53 of the Complaint, Defendant  
14       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
15       allegations and, therefore, denies the allegations therein.

16          54. In response to the allegations contained in paragraph 54 of the Complaint, Defendant  
17       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
18       allegations and, therefore, denies the allegations therein.

19          55. In response to the allegations contained in paragraph 55 of the Complaint, Defendant  
20       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
21       allegations and, therefore, denies the allegations therein.

22          56. In response to the allegations contained in paragraph 56 of the Complaint, Defendant  
23       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
24       allegations and, therefore, denies the allegations therein.

25          57. In response to the allegations contained in paragraph 57 of the Complaint, Defendant  
26       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
27       allegations and, therefore, denies the allegations therein.



1           58. In response to the allegations contained in paragraph 58 of the Complaint, Defendant  
2       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
3       allegations and, therefore, denies the allegations therein.

4           59. In response to the allegations contained in paragraph 59 of the Complaint, Defendant  
5       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
6       allegations and, therefore, denies the allegations therein.

7           60. In response to the allegations contained in paragraph 60 of the Complaint, Defendant  
8       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
9       allegations and, therefore, denies the allegations therein.

10          61. In response to the allegations contained in paragraph 61 of the Complaint, Defendant  
11       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
12       allegations and, therefore, denies the allegations therein.

13          62. In response to the allegations contained in paragraph 62 of the Complaint, Defendant  
14       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
15       allegations and, therefore, denies the allegations therein.

16          63. In response to the allegations contained in paragraph 63 of the Complaint, Defendant  
17       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
18       allegations and, therefore, denies the allegations therein.

19          64. In response to the allegations contained in paragraph 64 of the Complaint, Defendant  
20       Becerra contends that the paragraph consists of legal argument and/or conclusions, which do not  
21       require admission or denial. To the extent admission or denial is required, Defendant Becerra  
22       lacks knowledge or information sufficient to form a belief as to the truth of the allegations and,  
23       therefore, denies the allegations therein.

24          65. In response to the allegations contained in paragraph 65 of the Complaint, Defendant  
25       Becerra admits the content of California Penal Code section 26350. The remainder of the  
26       paragraph consists of legal argument and/or conclusions, which do not require admission or  
27       denial.  
28

1           66. In response to the allegations contained in paragraph 66 of the Complaint, Defendant  
2       Becerra admits the content of California Penal Code section 26375. The remainder of the  
3       paragraph consists of legal argument and/or conclusions, which do not require admission or  
4       denial.

5           67. In response to the allegations contained in paragraph 67 of the Complaint, Defendant  
6       Becerra admits the content of California Penal Code section 26400. The remainder of the  
7       paragraph consists of legal argument and/or conclusions, which do not require admission or  
8       denial.

9           68. In response to the allegations contained in paragraph 68 of the Complaint, Defendant  
10      Becerra admits the content of California Penal Code section 26405, subdivision (r). The  
11      remainder of the paragraph consists of legal argument and/or conclusions, which do not require  
12      admission or denial.

13          69. In response to the allegations contained in paragraph 69 of the Complaint, Defendant  
14      Becerra admits the content of California Penal Code section 25510. The remainder of the  
15      paragraph consists of legal argument and/or conclusions, which do not require admission or  
16      denial.

17          70. In response to the allegations contained in paragraph 70 of the Complaint, Defendant  
18      Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
19      allegations and, therefore, denies the allegations therein.

20          71. In response to the allegations contained in paragraph 71 of the Complaint, Defendant  
21      Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
22      allegations and, therefore, denies the allegations therein.

23          72. In response to the allegations contained in paragraph 72 of the Complaint, Defendant  
24      Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
25      allegations and, therefore, denies the allegations therein.

26          73. In response to the allegations contained in paragraph 73 of the Complaint, Defendant  
27      Becerra admits the First Amendment to the United States Constitution protects verbal and non-  
28      verbal forms of speech. As to the remaining allegations, Defendant Becerra lacks knowledge or

1 information sufficient to form a belief as to the truth of the allegations and, therefore, denies the  
2 allegations therein.

3 74. In response to the allegations contained in paragraph 74 of the Complaint, Defendant  
4 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
5 allegations and, therefore, denies the allegations therein.

6 75. In response to the allegations contained in paragraph 75 of the Complaint, Defendant  
7 Becerra contends that the paragraph consists of legal argument and/or conclusions, which do not  
8 require admission or denial. To the extent admission or denial is required, Defendant Becerra  
9 lacks knowledge or information sufficient to form a belief as to the truth of the allegations and,  
10 therefore, denies the allegations therein.

11 76. In response to the allegations contained in paragraph 76 of the Complaint, Defendant  
12 Becerra admits the content of the First and Second Amendment to the United States Constitution,  
13 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The  
14 remainder of the paragraph consists of legal argument and/or conclusions, which do not require  
15 admission or denial.

16 77. In response to the allegations contained in paragraph 77 of the Complaint, Defendant  
17 Becerra denies suppressing or threatening to suppress Plaintiff Zeleny's lawful exercise of his  
18 Constitutional rights. As to the remaining allegations, Defendant Becerra lacks knowledge or  
19 information sufficient to form a belief as to the truth of the allegations and, therefore, denies the  
20 allegations therein.

21 78. In response to the allegations contained in paragraph 78 of the Complaint, Defendant  
22 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
23 allegations and, therefore, denies the allegations therein.

24 79. In response to the allegations contained in paragraph 79 of the Complaint, Defendant  
25 Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
26 allegations and, therefore, denies the allegations therein.

1           80. In response to the allegations contained in paragraph 80 of the Complaint, Defendant  
2       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
3       allegations and, therefore, denies the allegations therein.

4           81. In response to the allegations contained in paragraph 81 of the Complaint, Defendant  
5       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
6       allegations and, therefore, denies the allegations therein.

7           82. In response to the allegations contained in paragraph 82 of the Complaint, Defendant  
8       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
9       allegations and, therefore, denies the allegations therein.

10          83. In response to the allegations contained in paragraph 83 of the Complaint, Defendant  
11       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
12       allegations and, therefore, denies the allegations therein.

13          84. In response to the allegations contained in paragraph 84 of the Complaint, Defendant  
14       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
15       allegations and, therefore, denies the allegations therein.

16          85. In response to the allegations contained in paragraph 85 of the Complaint, Defendant  
17       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
18       allegations and, therefore, denies the allegations therein.

19          86. In response to the allegations contained in paragraph 86 of the Complaint, Defendant  
20       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
21       allegations and, therefore, denies the allegations therein.

22          87. In response to the allegations contained in paragraph 87 of the Complaint, Defendant  
23       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
24       allegations and, therefore, denies the allegations therein.

25          88. In response to the allegations contained in paragraph 88 of the Complaint, Defendant  
26       Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
27       allegations and, therefore, denies the allegations therein.

89. In response to the allegations contained in paragraph 89 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

90. In response to the allegations contained in paragraph 90 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

## DECLARATORY RELIEF

91. In response to the allegations contained in paragraph 91 of the Complaint, Defendant Becerra denies that an actual, substantial, justiciable, and continuing controversy exists between Plaintiff Zeleny and himself. As to the remaining allegations, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

92. In response to the allegations contained in paragraph 92 of the Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or conclusions, which do not require admission or denial. To the extent admission or denial is required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

93. In response to the allegations contained in paragraph 93 of the Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or conclusions, which do not require admission or denial. To the extent admission or denial is required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

94. In response to the allegations contained in paragraph 94 of the Complaint, Defendant Becerra contends that the paragraph consists of legal argument and/or conclusions, which do not require admission or denial. To the extent admission or denial is required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

95. In response to the allegations contained in paragraph 95 of the Complaint, Defendant Becerra admits the content of California Penal Code sections 25510, 26375, and 26400. Defendant Becerra contends that the remainder of the paragraph consists of legal argument and/or conclusions, which do not require admission or denial. To the extent admission or denial is required, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

96. In response to the allegations contained in paragraph 96 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

97. In response to the allegations contained in paragraph 97 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

### **FIRST COUNT**

98. In response to the allegations contained in paragraph 98 of the Complaint, Defendant Becerra repeats his responses to the allegations contained in paragraphs 1-97 as though set forth fully herein.

99. In response to the allegations contained in paragraph 99 of the Complaint, Defendant Becerra admits the contents of the First Amendment to the United States Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Defendant Becerra contends that the remainder of the paragraph consists of legal argument and/or conclusions, which do not require admission or denial.

100. In response to the allegations contained in paragraph 100 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.

101. In response to the allegations contained in paragraph 101 of the Complaint, Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations therein.







1           116. In response to the allegations contained in paragraph 116 of the Complaint,  
2 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
3 allegations and, therefore, denies the allegations therein.

4           117. In response to the allegations contained in paragraph 117 of the Complaint,  
5 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
6 allegations and, therefore, denies the allegations therein.

7           118. In response to the allegations contained in paragraph 118 of the Complaint,  
8 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
9 allegations and, therefore, denies the allegations therein.

10           119. In response to the allegations contained in paragraph 119 of the Complaint,  
11 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
12 allegations and, therefore, denies the allegations therein.

13           120. In response to the allegations contained in paragraph 120 of the Complaint,  
14 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
15 allegations and, therefore, denies the allegations therein.

16           121. In response to the allegations contained in paragraph 121 of the Complaint,  
17 Defendant Becerra contends that the paragraph consists of legal argument and/or conclusions,  
18 which do not require admission or denial. To the extent admission or denial is required,  
19 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
20 allegations and, therefore, denies the allegations therein.

21                                   **FOURTH COUNT**

22           122. In response to the allegations contained in paragraph 122 of the Complaint,  
23 Defendant Becerra repeats his responses to the allegations contained in paragraphs 1-121 as  
24 though set forth fully herein.

25           123. In response to the allegations contained in paragraph 123 of the Complaint,  
26 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
27 allegations and, therefore, denies the allegations therein.  
28

1           124. In response to the allegations contained in paragraph 124 of the Complaint,  
2 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
3 allegations and, therefore, denies the allegations therein.

4           125. In response to the allegations contained in paragraph 125 of the Complaint,  
5 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
6 allegations and, therefore, denies the allegations therein.

7           126. In response to the allegations contained in paragraph 126 of the Complaint,  
8 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
9 allegations and, therefore, denies the allegations therein.

10           127. In response to the allegations contained in paragraph 127 of the Complaint,  
11 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
12 allegations and, therefore, denies the allegations therein.

13           128. In response to the allegations contained in paragraph 128 of the Complaint,  
14 Defendant Becerra contends that the paragraph consists of legal argument and/or conclusions,  
15 which do not require admission or denial. To the extent admission or denial is required,  
16 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
17 allegations and, therefore, denies the allegations therein.

18                                   **FIFTH COUNT**

19           129. In response to the allegations contained in paragraph 129 of the Complaint,  
20 Defendant Becerra repeats his responses to the allegations contained in paragraphs 1-128 as  
21 though set forth fully herein.

22           130. In response to the allegations contained in paragraph 130 of the Complaint,  
23 Defendant Becerra contends that the paragraph consists of legal argument and/or conclusions,  
24 which do not require admission or denial. To the extent admission or denial is required,  
25 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
26 allegations and, therefore, denies the allegations therein.

27           131. In response to the allegations contained in paragraph 131 of the Complaint,  
28 Defendant Becerra denies that Plaintiff Zeleny has asserted a claim under the California

1 Constitution. Defendant Becerra contends that the remainder of the paragraph consists of legal  
 2 argument and/or conclusions, which do not require admission or denial. To the extent admission  
 3 or denial is required, Defendant Becerra lacks knowledge or information sufficient to form a  
 4 belief as to the truth of the allegations and, therefore, denies the allegations therein.

5 132. In response to the allegations contained in paragraph 132 of the Complaint,  
 6 Defendant Becerra contends that the paragraph consists of legal argument and/or conclusions,  
 7 which do not require admission or denial. Defendant Becerra denies that Plaintiff Zeleny has  
 8 asserted a claim under the California Constitution. To the extent admission or denial is required,  
 9 Defendant Becerra lacks knowledge or information sufficient to form a belief as to the truth of the  
 10 allegations and, therefore, denies the allegations therein.

11 133. In response to the allegations contained in paragraph 133 of the Complaint,  
 12 Defendant Becerra denies promulgating policies and/or procedures, conducted under color of  
 13 state law, that deprived Plaintiff Zeleny of rights secured by the Equal Protection Clause of the  
 14 Fourteenth Amendment to the United States Constitution. The remainder of the paragraph  
 15 consists of legal argument and/or conclusions, which do not require admission or denial. To the  
 16 extent admission or denial is required, Defendant Becerra lacks knowledge or information  
 17 sufficient to form a belief as to the truth of the allegations and, therefore, denies the allegations  
 18 therein.

### 19 **PRAYER FOR RELIEF**

20 A. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,  
 21 “pursuant to 28 U.S.C. § 2201, binding on all Defendants, that California Penal Code §§ 26400  
 22 and 26350 are unconstitutional.”

23 B. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,  
 24 “pursuant to 28 U.S.C. § 2201, binding on all Defendants, that California Penal Code §§ 25510,  
 25 26375, and 26405 do not require municipal approval of ‘authorized participants’ in an  
 26 entertainment event or film or video production, and that Zeleny is legally permitted to carry  
 27 unloaded firearms in connection with his entertainment events and/or his film or video  
 28

1 productions, without the need for City approval, subject to compliance with other applicable  
2 laws.”

3 C. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,  
4 “pursuant to 28 U.S.C. § 2201, binding on all Defendants, that Zeleny’s peaceful carrying of  
5 unloaded firearms in the course of his speech on matters of public concern or matters of political,  
6 social, or other concerns to the community or issues of significant importance to the public as a  
7 whole, is constitutionally protected; in the alternative, enter a declaratory judgment, pursuant to  
8 28 U.S.C. § 2201, binding on all Defendants, that Zeleny’s peaceful carrying of unloaded  
9 firearms in the course of his entertainment events and/or his film or video productions, is  
10 constitutionally protected.”

11 D. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,  
12 “pursuant to 28 U.S.C. § 2201, binding on the City and Bertini, that Zeleny’s speech activity  
13 concerning the child rape cover-up by the Zhus and their associates is constitutionally protected  
14 and not obscene or ‘obscene as to minors’ within the meaning of the California Penal Code, and  
15 that their public display would not violate Penal Code §§ 311.2, 313.1(a), and 313.4, in virtue of  
16 its serious literary, artistic, political, and social value.”

17 E. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,  
18 “pursuant to 28 U.S.C. § 2201, that the City of Menlo Park’s Special Event Permit requirement is  
19 unconstitutional on its face, or in the alternative, as applied to Zeleny’s protests.”

20 F. Defendant Becerra denies that Plaintiff Zeleny is entitled to an injunction, “against  
21 Defendants prohibiting them from enforcing Penal Code §§ 26400 and 26350 against Zeleny in  
22 connection with his peaceful protests, from enforcing the City of Menlo Park’s Special Event  
23 Permit requirement, and from refusing to grant Zeleny required permits based on the content of  
24 his speech activity.”

25 G. Defendant Becerra denies that Plaintiff Zeleny is entitled to a declaratory judgment,  
26 “pursuant to 28 U.S.C. § 2201, construing California Penal Code §§ 25510, 26405, and 26375  
27 and enter a declaratory judgment stating that these sections exempt from sanctions under  
28 California Penal Code §§ 25400, 26400, and 26350 for the carrying of an unloaded handgun and

of an unloaded firearm that is not a handgun, *any individual* who acts and/or holds himself out as an authorized participant in, or serves as an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event. Relevant actions and representations include, without limitation, displaying ornamental signs or multimedia artworks; reciting slogans, speeches, or poetry; playing trumpets, accordions, bagpipes, or other musical instruments; and/or wearing conspicuous costumes, makeup, wigs, clown noses, or other decorative prostheses.”

H. Defendant Becerra denies that Plaintiff Zeleny is entitled to an award of attorneys fees pursuant to 42 U.S.C. § 1988 and California Code of Civil Procedure § 1021.5, and costs as provided by law.

I. Defendant Becerra denies that Plaintiff Zeleny is entitled to an award of any such other and further relief as the Court deems just and proper.

## **DEFENSES**

### **FIRST DEFENSE**

Plaintiff Zeleny fails to state a claim for relief against Defendant Becerra.

### **SECOND DEFENSE**

Plaintiff Zeleny’s alleged violation of the Fourteenth Amendment to the United States Constitution (Complaint, ¶¶ 129-133) fails because no case or controversy exists between Plaintiff Zeleny and Defendant Becerra.

### **THIRD DEFENSE**

Plaintiff Zeleny’s alleged violation of the Fourteenth Amendment to the United States Constitution (Complaint, ¶¶ 129-133) is barred by the Eleventh Amendment.

1 **FOURTH DEFENSE**

2 To the extent that Plaintiff Zeleny alleges a violation of the California Constitution  
3 (Complaint, ¶¶ 132), such claim is barred because a federal court may not grant relief against a  
4 state official on the basis of state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89  
5 (1984).

6 **FIFTH DEFENSE**

7 Defendant Becerra has insufficient knowledge on which to form a belief as to whether he  
8 may have additional, as yet unstated, defenses available. Defendant Becerra reserves the right to  
9 assert additional defenses in the event that discovery indicates such additional defenses are  
10 proper.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Defendant Becerra prays for judgment as follows:

- 13 1. Plaintiff Zeleny take nothing from Defendant Becerra by way of this action;  
14 2. Plaintiff Zeleny's Complaint for Declaratory and Injunctive Relief be dismissed with  
15 prejudice, and judgment entered in favor of Defendant Becerra;  
16 3. Defendant Becerra be awarded costs of suit, and any other relief which the Court  
17 deems proper.

18  
19 Dated: April 24, 2018

Respectfully submitted,

20 XAVIER BECERRA  
21 Attorney General of California  
22 TAMAR PACTHER  
23 Supervising Deputy Attorney General  
24 EMMANUELLE S. SOICHET  
25 Deputy Attorney General

26 /s/ Noreen P. Skelly

27 NOREEN P. SKELLY  
28 Deputy Attorney General  
Attorneys for Defendant Attorney General  
Xavier Becerra

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## CERTIFICATE OF SERVICE

Case Name: **Zeleny, Michael v. Edmund G. Brown, et al.** No. **CV 17-7357 JCS**

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I hereby certify that on April 25, 2018, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT ATTORNEY GENERAL XAVIER BECERRA'S ANSWER TO PLAINTIFF MICHAEL ZELENY'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 25, 2018, at Sacramento, California.

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Eileen A. Ennis

Declarant

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*s/ Eileen A. Ennis*

Signature